

MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI,

Respondent,

v.

RICHARD L. EVANS,

Appellant.

DOCKET NUMBER WD77734

Date: May 3, 2016

Appeal from:
Jackson County Circuit Court
The Honorable Charles H. McKenzie, Judge

Appellate Judges:
Division One: Lisa White Hardwick, Presiding Judge, Thomas H. Newton, Cynthia L. Martin, Judges

Attorneys:
Karen L. Kramer, Jefferson City for respondent.
Stephen M. Patton, Kenton M. Hall, Kansas City for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

RICHARD L. EVANS,

Respondent,

Appellant.

WD77734

Jackson County

Before Division One: Lisa White Hardwick, Presiding Judge, Thomas H. Newton, Cynthia L. Martin, Judges

Richard Evans appeals from his conviction of first-degree statutory rape. He contends the circuit court erred in (1) overruling his motion for a mistrial after a witness testified that he committed prior uncharged bad acts against the victim; (2) overruling his objection to the State's peremptory strike of an African-American venireperson; and (3) excluding expert testimony from a psychologist about the impact of the victim's mental health diagnoses on her ability to accurately perceive Evans's actions. Evans also argues the court plainly erred in allowing the State to call witnesses to testify regarding the victim's out-of-court statements about the incident.

AFFIRMED.

Division One holds:

(1) The circuit court did not err in overruling Evans's motion for a mistrial after a witness testified that the victim told her that Evans had previously fondled her. The

court struck the testimony and instructed the jury to disregard it. We presume the jury followed the court's instructions, and Evans did not rebut this presumption.

(2) The circuit court did not err in overruling Evans's objection to the State's peremptory strike of an African-American venireperson. Evans did not meet his burden of proving that the State's race-neutral reason for the strike was pretextual.

(3) The circuit court did not err in excluding expert testimony from a psychologist about the impact of the victim's mental health diagnoses on her ability to accurately perceive Evans's actions. The proffered expert testimony would have directly commented on the victim's credibility and, by doing so, would have invaded the province of the jury.

(4) The circuit court did not plainly err in allowing the State to call witnesses pursuant to Section 491.075, RSMo Cum. Supp. 2013, to testify about the victim's out-of-court statements that Evans raped her. The witnesses' testimony had probative value apart from the victim's out-of-court statements and did not constitute improper bolstering.

Opinion by: Lisa White Hardwick, Judge

May 3, 2016

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